

ORDINANCE NO. 2922

BILL NO. 105 (2000)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 6.04 OF THE
MAUI COUNTY CODE, PERTAINING TO ANIMAL CONTROL

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 6.04.010, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

"Attack" means aggressive physical contact initiated by a dog which includes, but is not limited to pouncing on, biting or scratching.

"Board" means the animal control board created pursuant to section 6.04.095.

"Bodily injury" means the same as that term is defined in section 707-700, Hawaii Revised Statutes.

"Dangerous dog" means any dog which attacks a person while on or off the owner's property, or a domestic animal while off the owner's property causing bodily injury to the person or serious injury or death to a domestic animal, or behaves in a manner that a reasonable person would believe poses an imminent threat of bodily injury to one or more persons or serious injury or death to domestic animals. A dog's breed shall not be considered in determining whether or not it is dangerous. Mere growling or barking or a combination of both shall not constitute grounds upon which to find a dog to be dangerous."

SECTION 2. Section 6.04.010, Maui County Code, is amended by repealing the definition of "vicious dog".

["Vicious dog" means a dog which assaults or attacks a human being or mammal except cats and rodents; or which behaves in such a manner, such as habitual or repeated chasing or snapping, that the owner reasonably should know that the dog has a tendency to assault or attack a human being or mammal except cats and rodents; or which has been certified by a doctor of veterinary medicine, upon the basis of a reasonable medical probability, as posing a danger to human beings or mammals except cats and rodents; or which has been trained as an attack dog; or which approaches a human

being in a vicious or terrorizing manner on public property or on private property open to the public. The term also means a dog which has been declared to be a vicious dog by the humane society, pursuant to this chapter. Notwithstanding the foregoing, the term shall not apply to a dog with respect to behavior of the dog when teased, tormented, abused or assaulted, or when a trespass, tort or crime occurs on the premises occupied by the dog's owner, or when the dog is protecting or defending a human being within the immediate vicinity from an attack or assault."]

SECTION 3. Section 6.04.040, Maui County Code, is amended to read as follows:

"6.04.040 Animal regulations--[General] general.

A. An owner of a dog shall keep the dog under restraint, except the following:

1. A dog being used by law enforcement agencies for law enforcement purposes;

2. A dog used during hunting; accompanied by its owner, and used with the consent of the owner of the real property upon which the hunting occurs; and

3. A dog used during organized competitions, or during training for such competitions, accompanied by its owner, and used with the consent of the owner of the real property upon which the dog is used.

B. An owner of an animal shall treat the animal in a humane manner.

C. An owner of a dog shall not allow the dog to cause a nuisance. The owner shall be held responsible for every behavior of such dog under the provisions of this chapter.

D. No person shall abandon an animal.

E. An owner of a dog shall not intentionally, knowingly, recklessly or negligently permit the dog to:

1. Attack a person or domestic animal; or

2. Behave in a manner that a reasonable person would believe poses an imminent threat of bodily injury to a person or serious injury or death to a domestic animal. The terms "negligently", "intentionally", "knowingly", and "recklessly" shall have the same meaning as are ascribed to the terms in section 702-206, Hawaii Revised Statutes.

F. No person shall own, harbor, train or use any dog for the purpose of dog fighting."

SECTION 4. Section 6.04.045, Maui County Code, is amended to read as follows:

"6.04.045 Dog regulations--[Vicious] dangerous dogs. When a dog is deemed [vicious] dangerous, the following must be complied with:

A. Immediately and at all times, an owner of a [vicious] dangerous dog shall restrict the movement of the dog as follows:

1. The dog shall be confined in a house or other building not open to the public, where the dog cannot exit the building on its own volition; provided that screen door or window screens shall not be deemed to prevent the dog from exiting the building; or

2. [The] When outdoors, the dog shall be confined [in] within a locked fenced area consisting of a fully enclosed structure with secure sides, top and bottom from which it cannot escape; or

3. [The] When off the owner's property, the dog shall be [secured by] attended and kept on a leash of not more than three feet in length with a minimum tensile strength of three hundred pounds held by or attached to a responsible person eighteen years of age or older; and, in addition, the dog shall be muzzled with a muzzling device which prevents the dog from biting human beings or animals, does not injure the dog, and does not interfere with its vision, respiration or breathing.

[B. No person shall own, harbor, train or use any dog for the purpose of dog fighting.]

[C.] B. Within ten days, [each] the owner of a [vicious] dangerous dog shall post a sign or signs indicating ["beware of dog"] "beware of dangerous dog" in a prominent and clearly visible place at the access to the real property where the dog is kept, and on the building or structure in which the dog is confined. In addition to these locations, the board may order additional signs to be placed at additional locations as deemed necessary, advising the public of the presence and dangerous nature of the dog.

[D.] C. Within ten days, [each] the owner of a [vicious dog shall provide to the humane society proof of liability insurance in the amount of not less than \$10,000 for a single incident, for bodily injury or property damage caused by vicious dogs] dangerous dog shall procure liability insurance in an amount not less than \$50,000 to cover the medical and/or veterinary cost resulting from potential future actions of the dog. The

insurance policy shall provide that the policy shall not be canceled unless thirty days' written notice is first given to the board and the humane society. Proof of said insurance shall be provided to the board and to the humane society. The owner of a [vicious] dangerous dog shall produce evidence of the insurance policy upon request of [an] any enforcement or police officer.

[E.] D. The owner of a [vicious] dangerous dog shall:

1. Notify the humane society within twenty-four hours after the owner knows or reasonably should know that the movement of the dog was not restricted as required by this section, or that the dog attacked a human being or domestic animal.

2. Upon the death of a [vicious] dangerous dog, notify the humane society immediately and make the body available for identification.

3. Advise the humane society before selling or giving the dog away. The new owner will be given a [vicious] dangerous dog notice and shall be subject to all applicable laws. It is a violation of this law for any person to transfer ownership of a [vicious] dangerous dog from such person to another person without compliance with this procedure.

4. Advise the humane society of any claims or lawsuits resulting from further instances of attack by the dangerous dog.

5. Within thirty days, permanently identify the dangerous dog by injecting into the dog an identification microchip using standard veterinary procedures and practices, which microchip shall include an identification number for the dog and the identification of the person performing the procedure to be registered with the humane society.

6. Accompanied by the dog, attend, and complete within six months training sessions conducted by an animal behaviorist, a licensed veterinarian or other recognized expert in the field. The owner shall be responsible for all costs associated with the evaluation and training ordered.

7. Within thirty days, neuter or spay the dog at the owner's expense, unless medically contraindicated.

[F.] E. If an enforcement officer has cause to believe that a dog is [vicious] dangerous, the officer may give the owner of the dog a written notice that the dog is a [vicious] dangerous dog, and is subject to regulation as a [vicious] dangerous dog. The notice also shall state that the owner may, within ten days, submit to the [humane society] board a written request for a

hearing to dispute the designation of the dog as a [vicious] dangerous dog. After receiving the request for a hearing, the [humane society] board shall hold a hearing and, after the hearing, shall notify the owner in writing of [the] its decision [of the humane society]. A decision of the [humane society] board that a dog is not a [vicious] dangerous dog, shall not preclude a subsequent designation of the dog as a [vicious] dangerous dog for other cause.

F. If an enforcement officer has cause to believe that a dog has attacked a person or domestic animal, or that the dog has behaved in a manner that a reasonable person would believe poses an imminent threat of bodily injury to a person or of serious injury or death to a domestic animal, the officer may immediately have the dog seized and impounded, and issue a notice to the owner to report to the board. At the owner's request, such impoundment may be at the premises of a licensed veterinarian or at a commercial kennel of the owner's choice. All expenses of the boarding and retention of the dog shall be borne by the owner.

G. In the event the owner fails to appear before the board at the time and place cited in the notice, the ownership of the dog shall be deemed forfeited and the board may thereafter order disposition of the dog as it deems appropriate. Notwithstanding any forfeiture of ownership or voluntary relinquishment of ownership of the dog, the owner shall remain responsible for all expenses of boarding the dog and any fees which may be imposed by the board.

[G.] H. The regulations in this section shall be in addition to other regulations under this chapter.

I. Any enforcement officer is empowered to make such inquiries as are deemed necessary to ensure compliance with this section, and may enter upon private property for purposes of inspecting the premises for compliance with this section."

SECTION 5. Section 6.04.050, Maui County Code, is amended by amending subsection A to read as follows:

"A. Any dog found running at large, and any [vicious] dangerous dog which is not restricted in movement as required by this chapter, may be seized and impounded by the enforcement officer in an animal shelter and confined in a humane manner. The enforcement officer may slay any previously adjudicated [vicious] dangerous dog which cannot be safely tranquilized and seized. Immediately upon impounding a dog, the enforcement officer shall notify the owner and inform such owner of

the conditions whereby custody of the animal may be regained.

Licensed dogs not claimed by their owners within a period of nine days, or unclaimed, unlicensed dogs after two days in which the shelter is open to the public shall become the property of the County."

SECTION 6. Chapter 6.04, Maui County Code, is amended by repealing Section 6.04.075.

["6.04.075 Power of enforcement officers. Any enforcement officer is empowered to make such inquiries as are deemed necessary to ensure compliance with this chapter, and may enter upon private property for the purpose of inspecting the premises for compliance with this chapter."]

SECTION 7. Chapter 6.04, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"6.04.095 Animal control board. A. Establishment.
There shall be and is hereby created an animal control board consisting of five members who shall be appointed by the mayor with the approval of the county council.

The membership of the board shall consist of the following:

1. One member who is a registered and licensed veterinarian in the State of Hawaii;
2. One member who is a member of the board of directors of the humane society; and
3. Three members of the general public.

B. Terms and operations. The members of the board shall serve for staggered terms of three years beginning on April 1st and ending on March 31st three years thereafter. The board shall select a chairperson and vice chairperson annually.

Any vacancy occurring due to the expiration of a member's term shall be filled in accordance with section 13-2.17 of the Maui County Charter.

C. Powers, duties and responsibilities.

1. The jurisdiction of the board shall be:
 - a. To hear and determine appeals from decisions concerning dangerous dogs as set forth in sections 6.04.045 and 6.04.050, and from any order issued by an enforcement or animal control officer relating thereto.

b. To conduct hearings on notices issued pursuant to subsections 6.04.045.F and .G, and thereafter, determine the status and disposition of the dog.

2. The board may reconsider, reverse, affirm or modify, wholly or partly, any decision appealed from. Exceptions or modifications from the strict application of the provisions of sections 6.04.045 and 6.04.050 may be granted only if the board finds:

a. That the strict application, operation or enforcement of the provision being appealed from would result in practical difficulty or unnecessary hardship to the appellant; and

b. That an exception, reversal or modification will not jeopardize life, limb or property.

D. Compensation. Members of the board shall not be compensated, but the members shall be reimbursed for expenses incurred in accordance with established County procedures.

E. Procedure. The proceedings of the board shall be subject to the provisions of chapter 91, Hawaii Revised Statutes, as amended. The board shall adopt rules for conducting its meetings, hearings and investigations in conformity therewith and impose reasonable fees to cover the costs of its proceedings.

F. Fee. Any appeal to the board shall be accompanied by a fee as set forth in the annual budget."

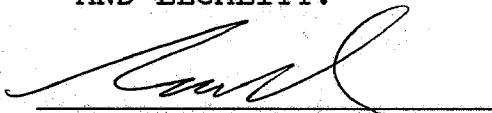
SECTION 8. Section 6.04.110, Maui County Code, is amended by amending subsection C to read as follows:

"C. Any person convicted of a violation of any section or provision of this chapter relating to [vicious] dangerous dogs shall be fined not more than \$1,000 and imprisoned not more than thirty days. The minimum sentence shall be as follows: for a first violation, a fine of not less than [\$100] \$200; for a second violation within five years after a prior violation under this section, a fine of not less than \$500; and, for a third violation within five years after two prior violations under this section, a fine of not less than \$1,000. In addition, a court may [offer] require restitution for damages caused by a [vicious] dangerous dog; provided, that this section shall not preclude a person damaged by a [vicious] dangerous dog from pursuing a civil remedy."

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in dark ink, appearing to read 'Edward S. Kushi, Jr.', written over a horizontal line.

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

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WE HEREBY CERTIFY that the foregoing BILL NO. 105 (2000)

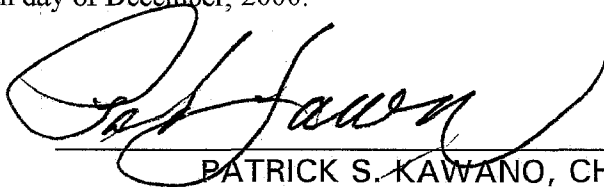
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 1st day of December, 2000, by the following votes:

Patrick S. KAWANO Chair	Dain P. KANE Vice-Chair	Robert CARROLL	Michael A. DAVIS	John Wayne ENRIQUES	G. Riki HOKAMA	Dennis Y. NAKAMURA	Wayne K. NISHIKI	Charmaine TAVARES
Aye	Excused	Aye	Aye	Aye	Aye	Aye	Excused	Aye

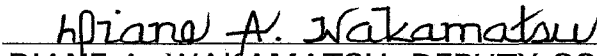
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 5th day of December 2000.

DATED AT WAILUKU, MAUI, HAWAII, this 5th day of December, 2000.

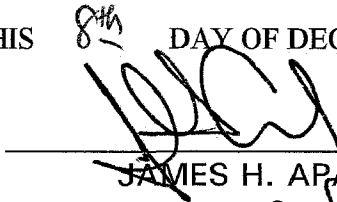
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OFFICE OF THE MAYOR



PATRICK S. KAWANO, CHAIR
Council of the County of Maui

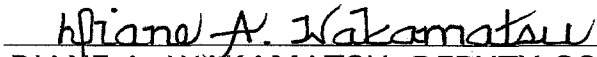

DIANE A. WAKAMATSU, DEPUTY COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 8th DAY OF DECEMBER, 2000.



JAMES H. APANA JR., MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2922 of the County of Maui, State of Hawaii.


DIANE A. WAKAMATSU, DEPUTY COUNTY CLERK
County of Maui

Passed First Reading on November 17, 2000.
Effective date of Ordinance December 8, 2000.

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OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy Ordinance No. 2922, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui